APPENDIX A
PARTIES FILING COMMENTS AND REPLY COMMENTS

Commenter	Abbreviation
ACS of Fairbanks, Inc.	ACS-F
Alaska Telephone Association	Alaska Tel. Ass'n
AT&T Corp.	AT&T
Beacon Telecommunications Advisors, LLC	Beacon
BellSouth Corporation	BellSouth
Cellular Telecommunications & Internet Association	CTIA
CenturyTel, Inc.	CenturyTel
Dobson Communications Corporation	Dobson
Fred Williamson and Associates, Inc.	.
Chouteau Telephone Company (Oklahoma)	
H&B Telephone Communications, Inc. (Kansas)	
Moundridge Telephone Company, Inc. (Kansas)	
Pine Telephone Company, Inc. (Oklahoma)	
Pioneer Telephone Association, Inc. (Kansas)	
Totah Telephone Company, Inc. (Kansas & Oklahoma)	
Twin Valley Telephone, Inc. (Kansas)	Fred Williamson & Assocs.
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
ICORE, Inc.	ICORE
Idaho Telephone Association	Idaho Tel. Ass'n
Interstate Telcom Consulting, Inc.	ITCI
Montana Telecommunications Association	Montana Telecomms. Ass'n
Montana Universal Service Task Force	MUST
Moultrie Independent Telephone Company	Moultrie Indep. Tel. Co.
National Association of State Utility Consumer Advocates	NASUCA
National Telecommunications Cooperative Association	NTCA
Nebraska Rural Independent Companies	Nebraska Rural Indep. Cos.
Nextel Communications, Inc. and Nextel Partners, Inc.	Nextel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Rural Cellular Association and Alliance of Rural CMRS Carriers	Rural Cellular Ass'n/Alliance of Rural CMRS Carriers
Rural Independent Competitive Alliance	Rural Indep. Competitive Alliance
Rural Telephone Finance Cooperative	Rural Tel. Finance Coop.
SBC Communications Inc.	SBC
Several Rural Telephone Companies	
Accipiter Communications, Inc. (Arizona)	
Alenco Communications, Inc. d/b/a ACI (Texas)	
Arkansas Telephone Company, Inc. (Arkansas)	

Beehive Telephone Company, Inc. Nevada (Nevada)	
Beehive Telephone Company, Inc. (Utah)	
Blossom Telephone Company, Inc. (Texas)	
Central Arkansas Telephone Cooperative, Inc. (Arkansas)	
Chickasaw Telephone Company (Oklahoma)	
Goodman Telephone Company, Inc. (Missouri)	
North Central Telephone Cooperative, Inc. (Tennessee)	
Ozark Telephone Company (Missouri)	
Pioneer Telephone Cooperative, Inc. (Oklahoma)	
San Carlos Apache Telecommunications Utility, Inc. (Arizona)	
Santa Rosa Telephone Cooperative, Inc. (Oklahoma)	
Scott Country Telephone Company, Inc. (Arkansas)	
Seneca Telephone Company (Missouri)	
South Arkansas Telephone Company, Inc. (Arkansas)	
Star Telephone Company, Inc. (Louisiana	
Valliant Telephone Company (Oklahoma)	Assorted Rural Tel. Cos.
Smith Bagley, Inc.	Smith Bagley
Sprint Corporation	Sprint
TCA, Inc. – Telcom Consulting Associations	TCA
Texas Public Utility Commission	Texas Commission
Texas Statewide Telephone Cooperative, Inc.	Texas Statewide Tel. Coop.
Townes Telecommunications, Inc.	Townes et al.
United States Cellular Corporation	USCC
United States Telecom Association	USTA
United Utilities, Inc.	United Utilities
Verizon Telephone Companies	Verizon
Washington Independent Telephone Association	Washington Indep. Tel. Ass'n
Washington Utilities and Transportation Commission	Washington Commission
Western Alliance	Western Alliance
Western Wireless Corporation	Western Wireless
WorldCom, Inc., D/B/A MCI	MCI

Reply Commenter	**Abbreviation**
AT&T Corp.	AT&T
ACS of Fairbanks, Inc.	ACS-F
Alabama Rural Local Exchange Carriers	
Ardmore Telephone Company	
Blountsville Telephone Company	
Brindlee Mountain Telephone Company, Inc.	
Butler Telephone Company, Inc.	
Farmers Telephone Cooperative, Inc.	
Frontier Communications of Alabama, Inc.	
Frontier Communications of Lamar County, Inc.	
Frontier Communications of the South, Inc.	
Graceba Total Communications, Inc.	
GTC, Inc.	

Gulf Telephone Company	
Hayneville Telephone Company, Inc.	
Hopper Telecommunications Company, Inc.	
Interstate Telephone Company	
Millry Telephone Company, Inc.	
Mon-Cre Telephone Cooperative, Inc.	
Moundville Telephone Company, Inc.	
National Telephone Company of Alabama, Inc.	
New Hope Telephone Cooperative, Inc.	
Oakman Telephone Company	
OTELCO Telephone LLC	
Peoples Telephone Company	
Pine Belt Telephone Company, Inc.	
Ragland Telephone Company	
Roanoke Telephone Company, Inc.	
Union Springs Telephone Company, Inc.	
Valley Telephone Company	Alabama Rural LECs
Alaska Telephone Association	Alaska Tel. Ass'n
Beacon Telecommunications Advisors, LLC	Beacon
BellSouth Corporation	BellSouth
Cellular Telecommunications & Internet Association	CTIA
Centennial Communications Corp.	Centennial
CenturyTel, Inc.	CenturyTel
Dobson Communications Corporation	Dobson
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Independent Telephone & Telecommunications Alliance	Indep. Tel. & Telecomms. Alliance
Montana Universal Service Taskforce	MUST
National Association of State Utility Consumer Advocates	NASUCA
National Telecommunications Cooperative Association	NTCA
Nebraska Rural Independent Companies	Nebraska Rural Indep. Cos.
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Rural Cellular Association-The Alliance of Rural CMRS Carriers	Rural Cellular Ass'n/Alliance of Rural CMRS Carriers
Rural Independent Competitive Alliance	Rural Indep. Competitive Alliance
South Dakota Telecommunications Association	South Dakota Telecomms. Ass'n
Sprint Corporation	Sprint
United States Cellular Corporation	USCC
United States Telecom Association	USTA
Verizon	Verizon
Washington Independent Telephone Association	Washington Indep. Tel. Ass'n
Western Wireless Corporation	Western Wireless
WorldCom, Inc. D/B/A MCI	MCI

SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Federal-State Joint Board on Universal Service, Recommended Decision

This Recommended Decision addresses several critical issues regarding the distribution of universal service support to carriers serving rural areas. These issues concern the designation and funding of eligible telecommunications carriers (ETCs) in rural areas facing competition, and they go to the heart of the Commission's administration of the federal high-cost support mechanisms. As Chair of the Joint Board, I have made this undertaking our highest priority, and I am grateful that my colleagues have responded with extremely thoughtful recommendations. While our work continues in some important respects, I am proud of the progress we have made, and I commend my colleagues and the outstanding staff for their diligent and insightful participation in this proceeding. We were able to reach consensus on several critical issues and we narrowed our differences on others. Where we have been forced to disagree, our divergences have been principled and respectful. It has been a privilege for me to serve with such a committed group of public servants.

A major impetus for initiating this proceeding was widespread uncertainty regarding the appropriate standards for determining whether the designation of a competitive ETC serves the public interest. We have responded to requests for guidance from state commissions and carriers by setting forth a comprehensive set of recommended minimum standards for the designation of ETCs. As I explained in a recent FCC designation decision, I believe that an ETC must be prepared to serve all customers upon reasonable request, and it must offer high-quality services at affordable rates throughout the designated service area.[364] State commissions, acting under section 214(e)(2), and the FCC, acting under section 214(e)(6), plainly should be able to impose conditions designed to ensure that all ETCs are appropriately qualified. Perhaps most importantly, the certifying authority should make sure that a prospective ETC has the ability and commitment to build out facilities as necessary to serve the entire designated area. I am pleased that my federal and state colleagues have unanimously agreed on this principle as well as other core standards that should make the designation process more rigorous, and also more uniform and predictable. I hope that state commissions and the FCC heed this guidance in upcoming designation proceedings.

The Commission's other principal charge to the Joint Board was to consider a variety of means to ensure the sustainability of high-cost funding in rural areas as competition grows. A majority of the Joint Board believe that the most promising proposals call for some kind of modification to the current system that funds all connections from all carriers (although, as discussed below, I believe that we must also continue to explore possible changes to the basis for calculating support). I do not know at this stage whether I will ultimately vote to adopt a primary-line restriction of the sort discussed in this Recommended Decision, but it seems clear that the universal service fund can no longer subsidize an unlimited number of connections provided by an unlimited number of carriers. Nor do I believe that the Communications Act contemplates such a result. Section 254 at bottom requires a "lifeline" connection to the PSTN

[364] Separate Statement of Commissioner Kathleen Q. Abernathy, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004).

— in other words, reasonably priced access to the network that provides the core "supported services" that make up universal service.[365] That goal will be fulfilled as long as the Commission continues to support a primary connection for every consumer living in high-cost rural areas.

Critics of primary-line proposals have raised legitimate concerns about administrability and the impact on investment in rural communities. In response, the Joint Board's recommendation is contingent on the Commission's ability to develop a workable primary-line rule. Moreover, my colleagues and I have worked hard to develop a variety of proposals that should mitigate the impact of any support restriction on rural consumers and carriers, and we have expressly recommended seeking further comment on this issue. Contrary to what some parties may have assumed, the Joint Board has never contemplated a sudden withdrawal of support for existing second lines. Rather, we have suggested further consideration of two straightforward propositions. First, a competitive carrier should receive support only to the extent that it "wins" the customer. And second, an incumbent ETC might risk losing the support associated with a customer when it no longer serves that customer. In rural areas that lack multiple ETCs — which is the vast majority of them — the primary-line proposals outlined in this Recommended Decision would bring about *no change* in the flow of high-cost funding. And even where competition has eroded rural carriers' customer base to some extent, the Joint Board has recognized the need to proceed cautiously before imposing any restrictions on the amount of available support. Given these efforts to protect consumers in rural areas, I believe it would be short-sighted to terminate our consideration of these proposals at this early stage.

Finally, I am pleased that we will continue to examine proposals to modify the basis of support for ETCs. Notably, every member of the Joint Board has recognized that "funding a competitive ETC based on the incumbent LEC's embedded costs may not be the most economically rational method for calculating support."[366] While we agree on the problem, the solution has been elusive. If the Commission wanted to fund competitors based on their own embedded costs, the record does not tell us how to calculate such costs, given that competitive carriers are not subject to a regulatory accounting regime. More troublingly, several parties have suggested that wireless carriers' per-line support would be *higher* than incumbents' if calculated based on their own network costs, given the new entrants' lower penetration rates — and obviously that would frustrate our goal of *restraining* growth in high-cost funding. Alternatively, if we were to pursue a forward-looking cost methodology, similar questions remain about how to implement such an approach at this time. And several parties have argued convincingly that, instead of focusing narrowly on the basis of support for competitive carriers, the Joint Board should comprehensively review the basis of support for *all* ETCs — as the Commission pledged in its *Rural Task Force Order* to do by 2006. The Joint Board has accordingly recommended that the Commission refer this broader issue for its consideration, and I hope that the FCC takes that step in the very near future.

[365] Support for the networks that provide the core services also enables consumers in rural areas to receive all of the other services — including advanced services — available over those networks.

[366] Recommended Decision, para. 96.

SEPARATE STATEMENT OF COMMISSIONER LILA A. JABER, FLORIDA PUBLIC SERVICE COMMISSION

Re: Federal-State Joint Board on Universal Service, Recommended Decision

The FCC has asked the Joint Board to review the FCC's current rules relating to high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and promoting competition continue to be fulfilled. By no means is this an easy task. On the other hand, this review is overdue in light of an evolving telecommunications market and the ongoing responsibility to maintain accessible, affordable telephone service for every American, while addressing the unintended consequence of a rapidly growing federal universal service fund. In meeting these obligations, I am optimistic that the recommended decision, if adopted by the FCC, has the potential of advancing the goal of universal service, ensuring long-term sustainability of the fund, and maintaining competitive neutrality. With that said, I recognize that there may be administrative difficulties that will have to be overcome should the FCC choose to go forward with our recommendations. I do believe that these difficulties, or "opportunities," can be addressed. This recommended decision at the very least will generate additional comments and constructive implementation suggestions to the FCC from various stakeholders.

I recognize the hard work of the universal service joint board staff and offer my sincere thanks. Their dedication and expertise in putting this complex matter into a simple form is evident in the work product. This document is yet another example of federal-state cooperation. In that same spirit, I applaud the tireless efforts of my joint board colleagues. This was an extremely difficult decision with good, plausible arguments on each side of every issue. At the end of the proverbial day, I remain hopeful that the ongoing dialogue from this point forward will result in optimal solutions to these matters.

ETC Designation Process

In the recommended decision, we propose that the FCC adopt permissive, minimum guidelines that state commissions and the FCC may use for all ETC designation proceedings. Use of these permissive guidelines should provide a more consistent application process among states. More importantly, these guidelines should further assist state regulators in determining if the public interest would be served by designating additional carriers as ETCs, thereby qualifying additional carriers for federal universal service support. I agree with the commenters who suggested that encouraging a more rigorous fact-finding ETC designation process for all carriers, in both rural and nonrural areas, should ensure that only carriers fully committed to meeting universal service obligations have access to the already-growing federal universal service fund.[367] Examples of the guidelines we propose be considered in the review process include suggesting that a carrier demonstrate its overall financial viability as well as its technical ability to provide quality services throughout its entire designated area. I find these permissive guidelines eminently reasonable. In fact, it should be clear that a state may impose additional requirements for ETC certification if the state so chooses. By this recommended decision, we

[367] *See, e.g.*, BellSouth Comments at 2 ("Strengthening the eligibility requirements for obtaining ETC status is a critical step in ensuring that the universal service fund remains 'specific, predictable and sufficient,' as required by Section 254."); *see also* NASUCA Comments at 8-9.

clearly intend to maintain state flexibility in the ETC designation process — authority some state commissions can clearly find in Section 214(e)(2). For other states, where certain carriers are not subject to the jurisdiction of a state commission, this recommended decision clarifies that the FCC, in implementing Section 214(e)(6), should apply these same guidelines.

Scope of Support

At the center of this recommended decision is a proposal to limit high-cost support to a primary connection for residential and business customers. This is a departure from the current structure that allows all ETCs to receive federal universal service support for all lines. This structure has created a situation where multiple ETCs in high-cost rural areas automatically receive support even if a carrier does not have an economically rational business case to support such entry. We should not support the current framework that allows subsidies to flow to multiple competitors where it is already cost prohibitive for a single provider. Some commenters believe that states have used multiple carrier ETC designation as a means to attract more universal service funds into the state.[368] While I do not know if this has happened, I do believe that the universal service fund should not be used to artificially induce competitive entry that would not have otherwise occurred. Instead, universal service funds should be used for the purpose intended --- to provide universal access to a customer by providing the appropriate funding for a single connection. This is the goal of universal service, as recognized as early as 1996 by the Joint Board. Implementation of the primary-connection proposal may well be essential in order to preserve the long-term sustainability of the federal universal service fund. Otherwise, excess support and resulting increases in USF assessment fees which flow through to consumers, thereby directly impacting their bills, can detract from the goal of universal access and affordability. Moreover, if this proposal is administratively feasible and can be implemented reasonably, the potential exists to provide the appropriate entry signals in rural and high cost areas. Carriers can and should compete for the primary connection since that is the trigger for receiving support from the fund under this proposal.

I also recognize that it is absolutely necessary to mitigate any potentially adverse impact of a primary line restriction on the rural carriers. Therefore, I support the proposal to seek further comment on "rebasing" the high-cost support that carriers currently receive. In areas where only one ETC is present, carriers should receive no less support than they receive now. In areas served by more than one ETC, we envision that customers would select their primary carrier.

Notably, a rural carrier would lose support under this primary-connection proposal only if it loses the customer to another ETC, whether it be a wireline or wireless competitor. I believe this answers, at least in part, the concern raised by some commenters that primary line restrictions will limit the availability of wireless service in rural areas, which could negatively impact the area's economic development. Under this recommended decision, wireless carriers can be selected by customers as the primary carrier, thus enabling wireless carriers to receive support from the fund in rural and other areas. Recently in addressing Virginia Cellular's application for ETC designation, FCC Chairman Powell stated that, "[d]espite the importance of making rural, facilities-based competition a reality, we must ensure that increasing demands on

[368] *See, e.g.* ,NASUCA Comments at 8-9.

the fund should not be allowed to threaten its viability."[369] I wholeheartedly agree. Consistent with Chairman Powell's statement, our recommended decision on this issue is an example of balancing legitimate concerns of our rural citizens with the goal of ensuring the long-term sustainability to the fund.

[369] *See* Separate Statement of Chairman Michael K. Powell in Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004).

SEPARATE STATEMENT OF COMMISSIONER THOMAS J. DUNLEAVY, NEW YORK STATE PUBLIC SERVICE COMMISSION

Re: Federal-State Joint Board on Universal Service, Recommended Decision

The issues referred to us in this phase of this proceeding are among the most complex and contentious we have been asked to address. They go to the heart of what we expect a universal service program to achieve and how we expect it to interact with the forces of a competitive market. Although this Recommended Decision does not resolve all the issues before us, I believe the recommendations we make here today will help sustain the federal universal service program, enabling it to more effectively achieve our dual goals of fostering competition while preserving universal service. I support this Recommended Decision as a reasonable step in the right direction.

Perhaps the most significant recommendation we make here today is to provide federal high cost support only for a subscriber's or household's primary connection to the telephone network. I believe this recommendation is entirely consistent with the fundamental purpose of the federal universal service program – ensuring that all homes and businesses can affordably connect to the rest of the world. When the Telecommunications Act of 1996 was being crafted, I doubt many people anticipated that in less than a decade most households would have both a wireline <u>and</u> a wireless phone and that many would have <u>multiple</u> wireless phones. I am convinced that, however much we might like to, we simply cannot sustain a universal service program that provides support to two, three, four or more phones in most households. At the same time, rules that would effectively preclude support to wireless services would not be competitively or technologically neutral and might artificially slow the deployment of desirable and potentially less costly services to high cost areas. While implementation of our recommendation to support only primary lines will no doubt involve some administrative complexities, I am confident that reasonable solutions will be found through further development of the record, as we here recommend. I also am confident that resolution of those challenges will place far fewer demands on the high cost support mechanism than will continuing to support multiple lines per household.

That said, I am keenly aware that our primary line proposal could significantly affect the support currently provided to existing eligible telecommunications carriers. No rule should be thought to be permanent, yet when changes are made reasonable efforts should be made on a transitional basis to mitigate sudden and severe negative consequences. I am pleased that our Recommended Decision recognizes this by offering several alternative proposals for further comment. Without expressing a preference for any of the alternatives, I would emphasize that no mitigation effort can be expected to live on in perpetuity, nor should one be used as a means to forestall competition in any area. Congress was quite clear; it intended to open <u>all</u> telecommunications markets to competition, not just markets in low cost or urban areas.

It is a testament to the dedication and professionalism of my Joint Board colleagues that we are able to suggest some significant changes to improve the federal universal service program, even as we continue to seek a fuller record on several issues. The state and federal staffs supporting this Joint Board once again have done an exemplary job helping us to understand the issues and our options and reducing our thoughts to writing. I offer them all my sincere appreciation.

SEPARATE STATEMENT OF BILLY JACK GREGG, DIRECTOR OF THE CONSUMER ADVOCATE DIVISION, PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

Re: Federal-State Joint Board on Universal Service, Recommended Decision

The most important aspect of our recommendation today is the decision to limit support to primary lines. Not only will this action slow the growth of the high cost fund stemming from support of multiple lines of multiple networks within the same area, but it will also fundamentally change the calculus for designating additional eligible telecommunications carriers (ETC's) in areas served by rural carriers. Since current Commission rules provide support to all lines of all ETC's, states have been faced with the perverse incentive of gaining more federal universal service support the more ETC's they approve.[370] By limiting support to primary lines, we eliminate this incentive and return to the original concept of universal service in a competitive environment: namely, that carriers will compete for the universal service subsidy,[371] and that competition will eventually drive down the overall cost of subsidizing service in high-cost areas.[372]

Several of my colleagues on the Joint Board have expressed concern over the fate of small, rural incumbent carriers if support is limited to primary lines. I share these concerns. However, under the Act, the proper place for these concerns is at the point when the decision is made whether to designate an additional ETC in an area served by a rural carrier.[373] If a state or the Commission believes that a particular rural area or a particular rural carrier cannot stand the loss or dilution of current levels of support, then under Section 214(e)(2) of the Act, it should

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[370] This perverse incentive is especially strong in areas served by rural carriers since these areas generally receive higher levels of federal support.

[371] *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (May 8, 1997) (*First Report and Order*) at ¶¶19; 287-289; 311-312; "The [FCC's universal service] order provides that the universal service subsidy be portable so that it moves with the customer, rather than stay with the incumbent LEC, whenever the customer makes the decision to switch local service providers... ." Alenco Communications, Inc. v. FCC, 201 F.3d 608, 621 (5th Cir. 2000) (*Alenco*).

[372] *See* House Report No. 104-204 (I)(1995), Arnold & Porter Legislative History P.L. 104-104 (*A&P*) at 60: "...as the current system of internal and external subsidies is replaced by a system consisting primarily of external subsidies, the total amount of subsidies collected from low-cost customers and passed on to high-cost customers would not change significantly. Over time, CBO expects that the operating costs of telephone companies would tend to fall as a result of competitive pressures and the total amount of subsidies necessary would decline." This view was also expressed by Senator Stevens during debate on the Act: "[The Act] opens up the local market to competition while still preserving the concept of universal service. It does so by taking advantage of new technologies which are intended to reduce the cost of all services, including universal service. In fact, I find it interesting that the Congressional Budget Office has said that this bill will reduce the cost of universal service from the existing system by at least $3 billion over the next five years." 141 Congressional Record S7881 (1995), *A&P* at 210. *See also* Senate Report No. 104-23, *A&P* at 254 (1995): "...competition and new technologies will greatly reduce the actual cost of providing universal service over time, thus reducing or eliminating the need for universal service support mechanisms as actual costs drop to a level that is at or below the affordable rate for such service in an area... ."

[373] It should be pointed out that under the integrated approach to primary line support outlined in the Recommended Decision, there would be no change in current support for a rural carrier unless and until an additional ETC is designated within the rural carrier's study area by the state or Commission.

find that additional ETC's are not "in the public interest." [374] If, on the other hand, states or the Commission find that multiple ETC's are appropriate in a particular area, then the portability rules should apply equally to all ETC's, regardless of the technology used, and regardless of whether the ETC is an incumbent or a new-comer. Proposals to reserve some support as the exclusive province of incumbent ETC's - regardless of previous public interest decisions under Section 214(e)(2) –violate, in my judgment, the principle of competitive neutrality.[375]

I believe that there are certain areas of this country where it is so expensive to provide service that it makes no sense to have more than one carrier subsidized by the federal universal service fund.[376] Moreover, I believe that it is relatively easy to determine where these areas are. The universal service fund provides various levels of support to over 1400 incumbent study areas in this country. At root, these support levels are based on the cost to provide service to the number of customers within each area. By comparing the average levels of per line support provided to each study area, the Commission should be able to determine per line support benchmarks that divide study areas where multiple ETC's are presumably in the public interest, and those areas where they are not.

Adoption of such benchmarks will provide guidance to competitors and incumbents, will introduce a degree of certainty into the telecommunications marketplace, and will greatly simplify ETC decisions for state commissions. After further development in proceedings before the Commission, I hope that this benchmarking concept is adopted to guide public interest determinations under Section 214(e)(2) of the Act.

[374] *See Alenco*, at 621-622: "To the extent petitioners argue Congress recognized the precarious competitive positions of rural LEC's, their concerns are addressed by 47 U.S.C. §214(e), which empowers state commissions to regulate entry into rural markets."

[375] The Commission has defined "competitive neutrality" as "...universal service support mechanisms and rules [that] neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." *First Report and Order*, ¶47. In *Alenco* the 5th Circuit found competitive neutrality to be an integral component of portability: "...portability is not only consistent with predictability, but also is dictated by principles of competitive neutrality and the statutory command that universal service support be spent 'only for the provision, maintenance, and upgrading of facilities and services for which the [universal service] support is intended.' " *Alenco*, at 622. The Commission has also previously addressed the inappropriateness of support programs available only to incumbents: "We have previously held, in interpreting section 254 of the Communications Act, that 'competitive neutrality in the collection and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and necessary to promote a procompetitive, de-regulatory national policy framework.' As discussed above, it is doubtful that a universal service funding program that restricts eligibility to ILECs could be considered competitively neutral. Thus, a program of this nature may well be found to be inconsistent with and to impede the achievement of important Congressional and Commission goals." *In the Matter of Western Wireless Corp. Petition for Preemption*, Memorandum Opinion and Order, File No. CWD 98-90, 15 FCC Rcd 16227 (Aug. 28, 2000) at ¶11.

[376] Indeed, but for explicit subsidies from the universal service fund and other federal programs, there would be no telephone service in large areas of this country.

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN DISSENTING IN PART, CONCURRING IN PART

Re: Federal-State Joint Board on Universal Service, Recommended Decision

I am troubled by today's Recommended Decision because it fails to provide sufficient guidance or a meaningful public interest test on the process for designating and funding eligible telecommunications carriers ("ETCs") that enter the market in high cost areas to serve rural consumers.

As I have stated in the past, I have concerns with policies that use universal service support as a means of creating "competition" in high cost areas.[377] In my view, the main goals of the universal service program are to ensure that all consumers--including those in high cost areas--have access at affordable rates. I remain hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. The Joint Board's recommendations may continue to make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in rural areas.

I believe the Joint Board should have recommended more immediate steps that the Commission should take to reform the ETC designation process. For example, I would have preferred that the Joint Board recommend that the Commission require ETCs to provide the same type and quality of services throughout the same geographic service area as a condition of receiving universal service support. In my view, competitive ETCs seeking universal service support should have the same "carrier of last resort" obligations as incumbent service providers in order to receive universal service support. Adopting the same "carrier of last resort" obligation for all ETCs is fully consistent with the Commission's existing policy of competitive and technological neutrality amongst service providers.

As I have supported in the past, I would have recommended that the Commission require ETCs to provide equal access. Equal access provides a direct, tangible consumer benefit that allows individuals to decide which long distance plan, if any, is most appropriate for their needs. As I have stated previously, I believe an equal access requirement would allow ETCs to continue to offer bundled local and long distance service packages, while also empowering consumers with the ability to choose the best calling plan for their needs.[378] An equal access obligation is also fully consistent with the Commission's existing policy of competitive neutrality amongst service providers, facilitating competition on the basis of price and service quality for comparable service offerings.

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[377] Separate Statement of Commissioner Kevin J. Martin, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking,* CC Docket (No. 00-256)(rel. October, 11, 2002): Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia,* Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (Jan. 22, 2004).

[378] Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service,* CC Docket No.96-45, (rel. July 10, 2002); Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service, FCC 03-170,* CC Docket No. 96-45, (rel. July 14, 2003).

I would have also preferred that the Joint Board recommend that the Commission require ETCs to provide service throughout the same geographic service area in order to receive universal service support. This obligation would help guard against the potential for creamskimming. I would have supported a recommendation to deny future requests to redefine the service areas of incumbent rural telephone companies--and to deny ETC designations in instances where an ETC's proposed service area does not cover the entire service area of the incumbent service provider.

Given that a majority of my colleagues were unwilling to recommend that the Commission adopt these same competitively neutral obligations for all ETCs, I concur in the Joint Board's recommendation to seek alternative means of limiting fund growth. To help slow the growth of the universal service fund, I specifically support one particular alternative of the primary line proposal. My support for the primary line proposals is limited to that "hold harmless" proposal.

Under the "hold harmless" alternative, per line support available to competitive ETCs would freeze upon competitive entry. Competitive ETCs would only be eligible for universal service support for customers who designated their service as the primary line. Unlike the other primary line proposals, however, this alternative would not cap per-line support for incumbent carriers and would thus "hold harmless" incumbent carriers from the loss of universal service support. As my colleague Commissioner Rowe has observed, this proposal would work to address the incumbents overall network costs that are incurred.

I look forward to working with my colleagues on the Commission as we address these critical issues regarding the distribution of universal service support to ETCs in high cost areas while ensuring that we maintain and preserve universal service in rural America.

JOINT SEPARATE STATEMENT OF COMMISSIONERS JONATHAN S. ADELSTEIN, G. NANETTE THOMPSON, REGULATORY COMMISSISSION OF ALASKA, AND BOB ROWE, MONTANA PUBLIC SERVICE COMMISSION APPROVING IN PART, DISSENTING IN PART

Re: Federal-State Joint Board on Universal Service, Recommended Decision

We are pleased that this Joint Board has determined that it is useful to employ guidelines to ascertain whether it is appropriate to designate multiple eligible telecommunications carriers in particular areas. We are pleased that this Joint Board recognizes, as Congress did in 1996, that when designating an ETC in an area served by a rural telephone company we must take greater care in examining the public interest to determine the wisdom of multiple ETCs in rural, high cost areas. Establishing a meaningful public interest test[379] and providing meaningful guidance on ETC designations will help to limit federal universal service funding to those providers who are committed to serve rural communities.[380]

We disagree, however, with the majority's recommendation to limit funding to primary lines. We believe it is inconsistent with Congress' intent when codifying the Universal Service provisions in the 1996 Act. It is also inconsistent with the December 18, 2003 letter from Senators Dorgan, Burns, Snowe, Johnson, Baucus, Lincoln and Daschle, stating that a primary line restriction would be "a major step backward that would thwart the essential purpose of universal service." A primary line restriction would reduce incentives for deployment of both wireless and wireline networks. We are also disappointed that the Joint Board cannot yet make progress on how to determine the basis of support, which was a core element of this "portability" referral.

The majority's recommendation to restrict funding to primary lines is a well-intentioned effort that will have a deleterious effect on the provision of universal service. Restricting funding to primary lines is not necessary to control fund growth. There are other better means to control fund growth that do not have the same draconian consequences for rural consumers and that would better advance the long term goal of an equitable support system that affords all Americans reasonable access to telecommunications services.

In this referral, the Joint Board faces the question of how the Act's goals of competition and universal service are to be reconciled and balanced in rural areas. The majority's recommendation would discourage network investment in rural areas. It also would distort rural markets in a way that would ultimately undermine the goal of universal service. Such a result is anathema to the purpose of universal service funding and the intent of Congress.

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[379] A meaningful public interest test will allow commissions to withhold granting ETC status to additional carriers if they believe that the dilution of support caused by the designation will undermine the ability of all carriers to offer comparable service at comparable rates as is required by Section 254(b)(3) of the Act.

[380] After further development of the record, it may be possible for the FCC to adopt more specific standards for consideration and adoption by the Commission or the states. For example, we note the specific recommendations offered by the Montana Independent Telecommunications Systems in an ex parte filed January 5, 2004. The ex parte suggested, *inter alia*, very specific provisions concerning coverage, network congestion, cost reporting based on existing NECA forms, and a method for achieving service quality standard comparability.

We believe that a better policy would be to put in place a more stringent public interest test, as we recommend today, and to move away from the identical support rule by basing each ETC's support on its own costs. This would limit fund growth, comply with Section 254(e) and encourage continued investment in rural markets. It also would limit funding only to those providers, whether incumbents or new entrants, who are committed to serve rural communities.

Designating Primary Lines

The majority recommends that support be distributed based on a carrier's number of primary lines and that support, under one option, be "rebased" to ensure that the amount does not change initially. If the number of primary lines were to increase in the future, however, support would increase. Likewise, if the number of primary lines were to decrease, support would decrease in proportion. Future support therefore depends upon an ETC's ability to get customers who will designate their line as primary. We foresee a number of harmful effects from such a system.

The primary line recommendation would be harmful to consumers. Section 254(b)(3) of the statute directs us to make reasonably comparable services available to consumers nationwide at reasonably comparable rates:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, *including interexchange services and advanced telecommunications and information services*, that *are* reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

This section provides not only that *the rates for* services should be reasonably comparable, but also that *access* should be reasonably comparable. Moreover, the statute covers not just basic service, but also advanced telecommunications services and information services.[381] Limiting support to primary lines would deny rural consumers comparable access to a variety of telecommunications services: voice, data, fixed, and mobile.

The majority's recommendation would deny support for all second lines, including those used as second voice lines and data lines.[382] The economic development effects in rural areas

[381] If this provision applied only to "access," then the statute would use the singular "is" to describe what must be reasonably comparable. We therefore conclude that the "reasonably comparable" language in Section 254(b)(3) focuses both on telecommunications *and* information services."

[382] In some cases, the consumer may be able to receive wireline and wireless service under the majority's recommendation, but only one of these services will be the primary "line" that is funded. And in some cases, the consumer may be able to receive more than one type of service over a single wireline connection. For example, some consumers can receive voice and data over a DSL connection. However, the decision to restrict funding to one line is not technology-neutral because it favors carriers who can provide multiple services over one connection. We acknowledge that providing an economic incentive for technological efficiency is a good result, but we are more

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could be quite harmful. Rates could become unaffordable for second lines in high cost areas because all consumers will be asked to pay the cost of a second line without any offsetting support. While the majority has offered options (e.g., rebasing, hold harmless provisions) to attempt to ameliorate the harmful affects of the lost support, we believe these options are likely to be anti-competitive, or will prove ineffective and impractical.

Rural business customers would be particularly disadvantaged because they frequently have more than one line. Net costs for telephone service would increase significantly for many of these rural business customers.[383] Consumers would also face higher costs for "data lines" or fax lines. Given the distance limitations inherent in DSL services, these fax and data lines are essential to the economic life of rural communities. Just as one example, it will be very difficult to attract telecommuters to an area that not only has no DSL but that has high rates for fax and data lines. These higher costs could severely affect small business investment in rural areas and would be very likely to restrict rural economic development. The rural areas most in need of economic development will be left further behind. If we don't care for these communities as Congress intended, photographs may well be all that is left as rural areas dwindle when faced with additional economic hardships.

The primary line recommendation will also be harmful to existing ETCs, especially rural carriers. The majority says that its proposal would protect rural providers. In reality, the proposal offers only a limited and temporary protection. It presumes not only that services and rates are now comparable between rural and urban areas, but also that the level of service will remain adequate in perpetuity. Markets are not static, and as time progresses, existing ETCs in many areas will lose primary line "market share." If the competitor is a wireless ETC, the loss in primary line market share may occur though the incumbent continues to serve their existing wireline customer base. Under the primary line proposal, even with the initial rebasing option,

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concerned that where dual technologies are not available, a consumer will be limited to one means of communication.

[383] The following chart illustrates the problem for rural businesses.

			Current Funding		Primary Line Funding			
Customer Type	Total Lines	Primary Lines	Per Line Funding	Total Funding	Per Primary Line Funding	Per Line Funding	Effective Per Line Funding	Change in Per Line Funding
Centrex	250	20	$10.00	$2,500	$15.27	$305	$1.22	($8.78)
Residential	10,000	7,500	$10.00	$100,000	$15.27	$114,557	$11.46	$1.46
Business	2,000	500	$10.00	$20,000	$15.27	$7,637	$3.82	($6.18)
Total	12,250	8,020		$122,500		$122,500		
Average			$10.00		$15.27			

ETCs that lose primary line market share will lose support. Over time, this will jeopardize the ability of carriers to provide rural consumers with access to comparable services at comparable rates.

For at least seventy years, and both before and after 1996 when universal service principles were codified, universal service policies have supported the cost of *networks* in high cost areas. Customers are not served by individual lines, but by networks.[384] While "basic access" has been the touchstone of the Lifeline program, the rural high cost program has traditionally recognized the importance of network support and cost recovery of network investment to keep rates and services comparable. Adopting a primary line approach would reverse this historical policy and fundamentally redefine universal service for rural communities. The primary lines approach is contrary to the Act because, as its authors understood, communications work through networks, not individual connections.[385]

Support limited to primary lines would not be sufficient in rural areas. Congress stated in Section 254(b)(5) that support must be "specific, predictable and sufficient." Rural carriers have higher operating costs and equipment costs because they have lower subscriber density and lack economies of scale. Losing support for "all lines" would potentially undermine the ability of these carriers to recoup their network costs without raising rates for rural consumers. Rebasing and similar hold harmless and lump sum payments would at best only temporarily address this problem. We should not be applying more temporary solutions to remedy the universal service programs. It is time to fix them with an eye towards the long term sustainability of the programs.

Telecommunications technology is advancing rapidly. If, as the Act provides, rural services are to be comparable to urban services, rural carriers must continue to invest in state-of-the-art equipment. But under the majority's primary line method, future revenues become much more uncertain. Any primary line market share loss to a competitor not only reduces the incumbent's customer revenue, but it also reduces universal service revenue. This magnification of investor risk is likely to discourage prudent carriers from installing costly new technology.

The Joint Board majority has cited with approval several recommendations in the 2000 report of the Rural Task Force.[386] An important concept in the Rural Task Force report was that there should be "no barriers" to deployment of advanced facilities.[387] While the Commission

[384] Technology has not yet obviated the need for physical networks. Even the most exciting new technologies are deployed either in or over networks. Networks are efficient in themselves, and they create opportunities for innovation by network users of all kinds. That's what customers need and expect.

[385] The economics of providing telephone service results in substantial fixed costs for the network capable of providing any service throughout the service area. Those costs do not vary significantly if the lines per customer location change. Therefore, reducing support to a carrier if its primary lines decrease almost guarantees insufficient support in the future for that carrier.

[386] E.g.: Recommendation, para. 18 (costs of rural carriers); paras. 53-54 (disaggregation); paras. 76-78 (cap on per-line support on competitive entry); para. 91 (adoption of embedded cost basis for support).

[387] The Rural Task Force recommended that the "no barriers" policy incorporate the following general principles: (1) support should be provided for plant "that can, either as built or with the addition of plant elements, when available, provide access to advanced services[;]" (2) "carriers should be encouraged by regulatory measures to remove infrastructure barriers relating to access to advanced services[;]" and (3) "[t]he federal universal service support fund should be sized so that it presents no barriers to investment in plant needed to provide access to

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has never endorsed that concept fully, it has agreed that universal service policies should not inadvertently create barriers to the provision of access to advanced services. It also has stated a belief that the current universal service system does not create such barriers.[388] The majority here moves away from effectuating a "no barriers" approach. By basing support on primary lines, the majority would substantially reduce the incentive for continued rural investment in any facilities by creating uncertainty of sufficient universal service funding. This is indeed a substantial barrier and one that is contrary to the spirit of the Rural Task Force Report.

The Act also anticipates that universal service will support an evolving level of services.[389] We cannot simultaneously put future investment at risk and increase the level of service. More Americans than ever have access to the Internet and mobile communications.[390] Unless providers can invest in their rural networks, they cannot provide that "evolving" level of service. Limiting support to primary lines may not only chill investment generally, but also may jeopardize funding for advanced services and cause networks to lag technologically for want of adequate investment.

The majority's recommendation also would jeopardize the continued availability of carriers of last resort. We cannot reasonably expect carriers to maintain responsibility as carrier of last resort if we deny them the funding necessary to build and maintain the network we demand.[391] The principle of a carrier of last resort is essential to universal service. However, by limiting funding to primary lines, we may inadvertently destroy the incentive to accept this responsibility.[392]

The majority's recommendation would effectively establish a virtual voucher system. Congress squarely addressed this issue in 1995, and dispatched it. During the debates about high cost funding, an amendment was offered that would have replaced the high cost funding

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advanced services." *Rural Task Force Order*, FCC 01-157 (released May 23, 2001), para. 197, citing Rural Task Force Recommendation at 22-23.

[388] *Rural Task Force Order*, FCC 01-157 (released May 23, 2001), para. 199.

[389] In Section 254(c)(1) Congress states that: "Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services."

[390] According to the CTIA Semi-Annual Wireless Survey, published June 2003, the number of wireless subscribers has increased from 10% from 2002 to 2003. As of the report, there were 148,065,824 wireless subscribers. From 2002-2003, the number of cell sites increased 12% to 147, 719. According to the FCC Industry Analysis and Technology Division High-Speed Services for Internet Access Report, from Dec. 2002-June 2003, subscribership to high speed services increased by 18% during the first half of 2003 to a total of 23.5 million lines. High speed ADSL lines in service increased by 19% during the first half of 2003 and high speed connections over coaxial cable systems increased by 20%. High speed connections to end users by means of satellite or fixed wireless technologies increased by 12% during the first half of 2003.

[391] States assign the COLR obligation differently, but it has consistently been an important policy tool to insure that all potential customers in high cost and hard to serve areas receive service.

[392] If the cost of acting as COLR is definable, the FCC should consider it as part of a funding system that bases support on provider costs.

mechanism with a voucher mechanism under which low income individuals would receive a voucher and then determine which carrier would get that funding. Essentially, the individual customer would have been given the opportunity choose his or her primary carrier. This amendment would have conflated the high-cost and low-income programs. It was soundly defeated. Congress clearly rejected efforts to merge the high-cost and low-income funds and to establish a voucher system. The majority's primary line recommendation violates Congressional intent in both ways.

Basing support on primary lines would raise serious administrative issues and would create opportunities for gaming that will disadvantage and confuse consumers. Defining primary lines is problematic in a multitude of housing and living situations. We cannot expect providers to investigate and police the panoply of American housing and living arrangements. Who is to decide which line is primary? If we shift the focus away from funding the network and give each individual or household a choice of primary line, we will have to define "household" and "individual." The telecommunications industry and its regulators are not well equipped to resolve these questions.

A primary line restriction is also unauditable. A consumer could easily have his wireline bill sent to a residence, and a wireless bill sent to a post office box. The inability to verify that the funds are being used appropriately compromises both the fund's integrity and the FCC's ability to ensure that the funds are being properly expended. We are concerned that any potential gains from restricting funding to primary lines will be outweighed by the administrative costs of administering funding only to primary lines and the risks that necessarily follow an unauditable restriction.

The FCC has moved away from its primary/non-primary residential line distinction in the interstate ratemaking process. For price-cap carrier, the FCC found that different Subscriber Line Charges (SLCs) created consumer confusion and unnecessary costs that were ultimately borne by consumers. Later, the FCC abandoned the distinction entirely in the Multi Association Group (MAG) proceeding and cited the Federal Regulatory Flexibility Act, which requires the Commission to take into account the potential impact of its rules on small, local telephone companies.

Carriers and customers would have a real opportunity for gaming with the primary line designation. The problem here is greater than with residential SLCs because there is potentially more money at stake. Carriers would have incentives to "slam" customers, and consumers would have incentives to game the system in order to maximize their household's funding. Past problems with slamming in long distance competition will pale in comparison to those that could arise when carriers can collect funding for winning primary line designations. Rather than competing to best serve customers, providers will compete for new ways to win designation as the primary carrier.

Basis of Support

We are disappointed that the Joint Board did not make greater progress on the issue of the basis of support. We believe that we have a sufficient record to recommend a policy goal that the amount of universal service support paid to competitive providers should not be based on the incumbent's costs.[393] We understand that our record does not support a final decision on how we would fairly administer support based on the competitors' costs.[394] We are pleased that our Joint Board colleagues recognize the need to consider modifying the basis of support.[395] However, we believe that a clear policy statement here would better guide the development of the record and better enable the FCC to resolve sooner this complex issue.

Equal Access

Commissioner Adelstein deferred his vote on the inclusion of equal access in the list of supported services to this proceeding because he believed that there was intent to address and resolve the basis of support question. We should at least have addressed the issue of the funding impact of equal access.[396]

Under the MAG plan, the Commission reduced access charges, and to make the universal service mechanism more explicit, moved that amount into the universal service fund. This was responsive to the need to make explicit, as far as possible, those federal universal service subsidies that were implicit, as intended by Congress. The resulting program, Interstate Common Line Support (ICLS) includes the cost of providing equal access. At the very least, this Joint Board should recommend to the Commission that, pending determination of the appropriate basis of support, competitors that do not provide equal access should not receive at least that portion of ICLS that is based upon equal access costs.

For these reasons, we approve in part and dissent in part. We concur in the portion of the recommended decision relating to certification of eligible telecommunications carriers, but dissent from the portion relating to designation of primary lines.

[393] Commissioners Adelstein and Rowe recommend that carriers receive support based on their own costs. Commissioner Thompson would not yet rule out the options that in high cost competitive markets support be based on a forward looking methodology or a bidding process.

[394] For example, we need to understand how support will be calculated when providers use different technologies to serve customers, have different accounting systems and varying levels of service. We would consider specific interim measures to address immediate concerns, like a rigorous, interactive workshop to develop an appropriate costing regime. We suggest that the FCC ask for comments on whether reopening the "Path 3" window for self-certification of disaggregation would address cream-skimming concerns until a new basis of support is implemented.

[395] The deadline for review of the use of embedded costs to determine rural carrier support looms, and providers in those markets are better served by as much advance notice of possible changes as we can provide so that they can make reasonable planning decisions.

[396] Commissioner Thompson opposed including equal access in the list of supported services. Commissioner Rowe supported its inclusion.